

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5145 of 1996

to

FIRST APPEAL No. 5166 of 1996

And

CIVIL APPLICATIONS No. 6899 of 1997 to 6920 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SPECIAL LAND ACQUISITION OFFICER

Versus

KANUJI AMARSING THAKOR & OTHERS.

Appearance:

Mr. P.G. Desai, Government Pleader with Mr. Mukesh Patel, A.G.P. for the appellants.

Mr. A.J. Patel, Advocate for the respondents.

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE H.R.SHELAT

Date of decision: 04/08/97

ORAL JUDGEMENT (Per: J.N. Bhatt, J.)

Admit. Learned advocate, Mr. A.J. Patel waives service on behalf of the respondents in entire group of 22 appeals. Upon joint request and considering the peculiar facts and special circumstances, the entire group of 22 appeals is taken up for final hearing forthwith.

2. In this batch of 22 appeals under Section 54 of the Land Acquisition Act, 1894 (Act), common questions are involved and also the appeals arise out of common judgment and award of the Second Extra-Assistant Judge, Mehsana in L.A.R. Cases No. 134 of 1992 to 150 of 1992 and L.A.R. Cases No. 166 of 1993 to 170 of 1993 passed on 18-11-1995.

3. A resume of relevant and material facts leading to the rise of this batch of 22 appeals may be stated at the outset. The appellant in all appeals is the original-opponent, Special Land Acquisition Officer, Mehsana, who acquired lands pursuant to a notification under Section 4(1) of the Act published on 9-4-1990 and followed by a notification under Section 6 of the Act dated 7-9-1990 in respect of several parcels of land in village Verkhadia in Kadi Taluka, District-Mehsana after observing necessary formalities. The Land Acquisition Officer offered and awarded 0.86 ps. per sq.meter of an acquired land by his award dated 30th March 1991. The respondents who are original-claimants, inter alia, contending in view of the geographical situation, the irrigated nature of land having three crops a year, and the infrastructural facilities available in the village, had demanded an amount of Rs. 30/- per sq.mtr. of the land against which Land Acquisition Officer awarded 0.86 ps., with the result reference under Section 18 of the Act came to be made. The Reference Court by its common judgment and award dated 18-11-1995 awarded additional amount of Rs. 9.14 ps. per sq.mtr. Thus the claimants in all got the amount of compensation at the rate of Rs. 10.00 per sq.mtr. of land and interest and other incidental benefits available to them under the Act. The original-opponent, Land Acquisition Officer, being aggrieved by the said common judgment and award of the Reference Court at Mehsana, has now come up before this court challenging the validity and legality by filing this batch of 22 appeals under Section 54 of the Act.

4. During the course of hearing of the entire group on merits, we were supplied with the copies of evidence produced before the Reference Court and relied on by it. The Reference Court has assessed market value of the land at Rs. 9.14 ps., over and above the amount of 0.86 ps. assessed by the Land Acquisition Officer per square meter taking into consideration the following aspects;

- a) The location of the lands;
- b) The village is connected with tar roads and is situated on Kadi-Viramgam Highway;
- c) Availability of infrastructural facilities in the village like light, water and drainage;
- d) The village is covered and situate near the industrial area;
- e) The fact that there are various big factories and manufacturing concerns;
- f) The facility of irrigation and taking up of 2 to 3 crops with the help of irrigation. The nature and quantity of the crop yielded out of the said parcels of land.

5. The award produced at Exh. 45 in respect of lands forming part of village Vekra which shows that the same court had awarded an amount of Rs. 10.00 per sq.mtr. by way of compensation.

6. The certified true copy of the award Exh. 45 which is in respect of acquisition of lands of Village Vekra which is adjoining to village Verkhadia and the relevant revenue records were produced for the purpose of comparison and compatibility of the parcels of land covered under the previous award of Exh. 45 and the lands under the impugned award. It is clearly borne out from the plain perusal of award Exh. 45 that the lands of both the villages, namely Vekra and Verkhadia are adjoining and in the neighbourhood. This aspect is also not in controversy before us. The assessment of the market value as per Exh. 45 award came to be made at Rs. 10.00 per sq.mtr. The Reference Court, Mehsana, also placed strong reliance on the said award Exh. 45. We may also make it clear and place it on record that it was jointly submitted at the Bar that the award Exh. 45 has become final. In our opinion also, the reliance on the

award Exh. 45 is quite justified. The Reference Court has taken into consideration the said award Exh. 45 and many other relevant and important aspects from the record of the present case and the principles enunciated in Section 23 of the Act and has assessed the market value at the rate of Rs. 10.00 per sq.mtr. After having taken into account the entire evidence on record and the impugned common judgment and award in respect of lands covered thereunder, we are satisfied that the assessment of the market value made by the Reference Court at Rs. 10.00 per sq.mtr of land is quite justified.

7. Again, it may also be noted that in the award Exh. 45 of the same court in respect of the comparable lands of the adjoining village which has become final, reliance is also placed on two other awards of adjoining village which are referred at Exhs. 40 & 41, wherein also the amount of market value is assessed by the same court in respect of the lands covered thereunder at Rs. 10.00 per sq.mtr. The notification in respect of an award at Exh. 45 under Section 4(1) of the Act was published on 8.6.1990 followed by publication of the notification under Section 6 on 29-5-1991. The common award of the Reference Court at Exh. 45 was declared on 26-9-1995. There are also documents of revenue record and Revenue Officer showing the nearness and proximity of the lands covered under Exh. 45 award and the lands covered under the impugned award. In the circumstances, we have no hesitation in finding that the award Exh. 45 is comparable, acceptable and is rightly relied on by the Reference Court. Nothing has been successfully pointed out from the material emerging from the record of the present case which would even remotely warrant our interference except in respect of following points;

(1) In view of the provisions of Section 23(1-A) and Section 23 (2) and the ratio propounded by the Hon'ble Apex Court in Prem Nath Kapur and Another vs. National Fertilizers Corporation of India, reported in 1996 (2) S.C.C. 71, in our opinion, the claimants are not entitled to;

(i) Interest awarded on the additional amount payable under Section 23(1-A) of the Act and also solatium under Section 23 (2) of the Act;

(ii) No solatium on the additional amount under Section 23 (1-A) of the Act.

8. With the result, the appeals are partly required

to be allowed to that extent. At the same time, it has come to our notice that the Reference Court has observed that 5% of the amount of compensation will be deducted being the contribution to the Government in case of new tenure land. We are of the opinion that the Circular, on which the reliance is placed while passing such a direction, will not be applicable in view of the decision of the Apex Court in State of Maharashtra 's case (Supra) for the simple reason that it would be applicable in case of voluntary transfer of land from new tenure to old tenure and it shall not be applicable to the lands under compulsory acquisition. In the decision of the Supreme Court in State of Maharashtra vs. Babu Govind Gavate, reported in A.I.R. 1996 S.C. 904, it has been clearly laid down that Section 43 of the Bombay Tenancy and Agricultural Lands Act (67 of 1948), a resolution or the circular authorising and empowering Government to deduct 1/3rd amount will not be applicable when Government exercises its power of eminent domain for a public purpose. Therefore, the Circular dated April 26, 1972 issued by the Revenue and Forest Department in letter No. LON-4767-H directing deduction of 1/3rd or thereafter 5% of the market value of the land for the interest in such amount held by the Government is found to be ultra vires Section 43. Therefore, the direction contained in the penultimate para of the award, in respect of deduction of 5% contribution to the Government in view of the said circular of the Government, is required to be quashed and set aside. Accordingly, it is quashed and set aside.

9. No doubt, the respondents have not filed cross-objections nor have instituted counter appeals. However, considering the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908 (Code), the necessary alteration and modification in the impugned award could be made in the larger interest of justice.

10. In view of the aforesaid facts and circumstances emerging from the record of the present case and the evidence, copies whereof were supplied to us during the course of the submissions, we have no hesitation in recording our satisfaction and concurrence with the assessment of market value at the rate of Rs. 10.00 per sq.mtr. and resultant aforesaid modifications in the impugned award. Consequently, the appeals are required to be allowed to the aforesaid extent. The appeals, therefore, are partly allowed as indicated hereinabove. There shall be no order as to costs, in view of the peculiar facts of the case. The appellant original-opponent, Special Land Acquisition Officer, Mehsana, has not deposited any amount towards the

impugned awards in this group of 22 appeals. There is no dispute about this aspect. With the result, we hereby direct the appellant original-opponent in all matters to deposit before the Reference Court the amounts payable to the respective claimants, in the light of our observations and directions, within a period of eight weeks from today.

11. There shall be no orders on the Civil Application in view of the disposal of the main appeals.

.....